

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing/Order: 4.12.2017

Appeal No. E/55413/2013-SM

(Arising out of Order-in-Appeal No. 69/CE/D.II/12 dated 5.9.2012 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Automotive Diagnostics

Appellant

Vs.

CCE, New Delhi

Respondent

Appearance

Shri R. Santhanam, Advocate

- for the appellant

Shri K. Poddar, D.R.

- for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58253/2017

Per S.K. Mohanty :

In this case, the SSI exemption claimed by the appellant was denied by the department on the ground that the appellant had used the brand name of his brother's business, which is not permissible for claim of the SSI benefit. The appellant had accepted the duty liability and deposited the duty before issuance of the show cause notice. The amount deposited by the appellant was appropriated against the duty demand confirmed in the adjudication order dated 9.9.2002. The grievance of the appellant, in this appeal, is that the benefit of reduced amount of penalty has not been extended by the

authorities below. The benefit of the reduced amount of penalty has been denied by the department on the ground that the appellant did not pay the interest amount under Section 11AB of the Central Excise Act, 1944 attributable to the late payment of the duty amount.

2. The Id. Advocate appearing for the appellant submits that the provisions of Section 11AB of the Act existed at the material time provides for payment of interest, only when the duty liability is determined by the adjudicating authority and if the said determined amount is not paid within 90 days from the date of adjudication order, then the interest is required to be paid by the assessee in terms of the un-amended Section 11AB of the Act. Thus, he submits that since the entire duty amount was deposited by the appellant before adjudication of the matter, there was no question of determination of duty by the proper officer regarding non-payment of further additional duty by the appellant and accordingly, interest liability cannot be fastened against the appellant in terms of Section 11AB of Act, as it stood at the material time.

3. The Id. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. The fact is not under dispute that the appellant had deposited Rs. 13.80 lakhs before issuance of the show cause notice and the said amount was adjusted against the demand of Rs.13,15,524/- confirmed by the adjudication order dated 9.9.2002. Thus, it is evident that at the time of passing of the adjudication order, there was no outstanding duty liability against the appellant. Rather the amount paid by the appellant was in excess than the demand confirmed against it. Section 11AB of the Act, as it stood at the material time, clearly provides that there should be determination of the duty liability and in case of non-payment of such duty within 90 days from the date of determination, the interest liability is required to be fastened against the assessee. The said provision in this case will not be applicable inasmuch as the entire disputed amount was deposited even much before the date of passing of the adjudication order. Therefore, in terms of the provisions of Section 11AB of the Act, prior to its substitution by new Section 11AB (with effect from 11th May 2001), interest liability cannot be confirmed against the assessee in absence of any outstanding amount of duty pending against the assessee for recovery. In this case, since, the entire duty amount has been paid by the appellant before adjudication of the matter, I am of the view that the benefit of reduced amount of penalty in terms of Section 11AC of the Central Excise Act, 1944 should be available to the appellant, which admittedly has been

extended by the authorities below on the ground that the appellant did not pay the interest within the stipulated time frame under Section 11AB (effective from 11th May, 2001). Since, the period covered under the dispute relates to the period prior to the substitution of new Section 11AB of the Act, the provisions of such amended rule will not be applicable in the case of the appellant herein. Therefore, I am of the considered view that the appellant should get the benefit of payment of reduced amount of penalty of 25% in terms of Section 11AC *ibid*.

6. In view of above, the impugned order, denying the benefit of reduced amount of penalty is set aside and the appeal is allowed in favour of the appellant with consequential benefit.

(Dictated & Pronounced in Court)

(S.K. Mohanty)
Member (Judicial)

RM